FARMERS' & DROVERS' SAV. BANK v. KANSAS CITY PUB. CO.

Case No. 4,652.

{3 Dill. 287.}[1]

Circuit Court, W. D. Missouri. 1876.

BANKRUPT ACT—EQUITABLE ASSIGNMENT OF DEBT DUE BY STOCKHOLDERS FOE SUBSCRIPTION TO STOCK.

The bankrupt company had, before bankruptcy, duly made calls upon its members for the payment of the balance due on their stock, which thus became a debt due by each of them to the company. The company wishing to make a loan of money of the bank, agreed in consideration of an advance by the bank that the bank should collect the calls and apply the amount collected from time to time on the debt created by the advance, and in pursuance of this agreement the company delivered to the bank a list of the stockholders and the amount due from each on the calls, and the bank collected a portion before the bankruptcy: *Held* that the transaction between the company and the bank amounted to an equitable assignment of the calls to the bank, which was not defeated by the subsequent bankruptcy of the company.

On an appeal from an order from the United States district court {case unreported}, rejecting claim of appellant as a secured claim.

John K. Cravens, for appellant.

Lay & Belch, for appellee.

DILLON, Circuit Judge. The calls on the shareholders having been made before the transaction with the bank, the amount called for was a debt due the publishing company.

It is an established doctrine in equity that "any order, writing, or act, which makes an appropriation of a fund amounts to an equitable assignment of that fund," and also that "an assignment of a debt may be by parol as well as by deed." Here the bank advanced the money to the publishing company on the faith of the agreement made at the time, by the publishing company, that the bank should collect the calls and apply them on the debt created by the advance of the bank to the company, and in pursuance of this agreement delivered to the bank a list of the stockholders and the amount of the debts respectively due from them on the calls. A portion of these were collected by the bank before the bankruptcy. The transaction between the company and the bank amounted to an equitable assignment of the calls to the bank which was not defeated by the subsequent bankruptcy of the company. These views will be found fully supported by the following authorities: 2 Story, Eq. Jur. § 1047; Burn v. Carvalho, 2 Mylne & C. 690, 702; Clemson v. Davidson, 5 Bin. 392, 398; Heath v. Hall, 2 Rose, 271, 4 Taunt. 326, 328; In re Sankey Brook Coal Co., L. R. 9 Eq. Cas. 721; Gibbs & West's Case, L. R. 10 Eq. Cas. 312; Garnsey v. Gardner, 49 Me, 167; 1 Pars. Cont 228.

The case as made is not within the Missouri statute of frauds. The order of the district court is reversed.

Reversed.

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[1] {Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission.}